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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

October Term, 1969

No. 1832 Misc.

WILLIAM STANBRIDGE,

Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, William Stanbridge, prays that a writ of certiorari shall issue to review a judgment of the New York State Court of Appeals entered January 8, 1970.

Opinion Below

The judgment in the New York State Court of Appeals was unanimously affirmed with Chief Judge Fuld and Judge Burke concurring because of an earlier decision in the Court in *People* v. *McNeil* (24 N.Y. 2d 550), which they thought obliged to follow. The opinion is reported officially at 26 N.Y. 2d 1 and is reproduced in the Appendix as Exhibit A for the convenience of the Court.

Jurisdiction

The jurisdiction of this Court is apparently sought pursuant to 28 U.S.C. § 1257(3), it being argued that petitioner's Fifth, Sixth and Fourteenth Amendment rights to a fair trial, free of a confession of a co-defendant, was denied him by the State of New York.

Questions Presented

William Stanbridge, together with Robert Moll and John Closter, committed an armed robbery at the Food Fair Shopping Market, Northern Boulevard, Manhasset, stealing at gunpoint a sum of money in excess of $3,000. The robbery took place in the neighborhood of 6:30 the evening of March 22, 1961. While running from the rear of the store through the parking lot to get to their getaway car, defendants were accosted by Patrolman Joseph Coote of the Nassau County Police Department who was shot dead with a sawed-off shotgun by Robert Moll. Following the murder, the defendants got into their car and left the area.

Stanbridge, Closter and Moll were taken into custody at 11 o'clock, March 22, 1961, 3 o'clock and 6 o'clock March 23, 1961, respectively. Moll seriously injured his hand when firing the sawed-off shotgun so he confessed spontaneously. Closter and Stanbridge thereafter confessed and the sawed-off shotgun and the proceeds of the robbery were ultimately recovered.

The police were led to Stanbridge by a 1955 Chevie hot-rod identified at the scene. This Court (395 U.S. 709) vacated the judgment upholding the conviction in the New York State Court of Appeals (21 N.Y. 2d 706) and remanded the case for reargument in light of *Bruton* (391 U.S. 123).

The judgment upon reconsideration was affirmed, the Court concluding each defendant had confessed and each

defendant had testified at a confession hearing before the judge and out of the presence of the jury and was exposed to full and complete cross-examination thereby removing the case from the spirit and rationale of *Bruton* (391 U.S. 123).

Petitioner, though he confessed and had an opportunity at the hearing to cross-examine Closter and Moll, nevertheless contends he is protected by *Bruton,* consequently New York has improperly applied the decision of this Court to his case. The respondent contends to the contrary.

The Writ Should be Disallowed

There are no compelling reasons for granting the writ because the New York State Court of Appeals did not decide a federal constitutional question heretofore undetermined by this Court.

Moreover, the Court of Appeals has not decided this case in a way probably not in accordance with any prior controlling decision of this Court.

The key issue elevated by the petition relates to the fairness of the trial. Stanbridge contends his rights in this regard were denied him because of the confession of Closter and Moll. An examination of the brief filed by the District Attorney and the record of the trial also filed with this Court in connection with an application for certiorari by a co-defendant (*Moll* v. *New York,* No. 1484, October Term 1967) reveals the following: Stanbridge, with regard to the voluntariness of his own confession, took the stand and testified (H. 55, *et seq.*). He was not cross-examined by Mr. McDonough, the attorney for Moll, or Mr. Schneider, the attorney for Closter (H. 172). The second co-conspirator to testify was Closter (H. 190, *et seq.*), who was cross-examined in behalf of Moll (H. 206-211) and Stanbridge (H. 211-216).

It is beyond question that counsel for Moll and Stanbridge, this petitioner, made Closter their own witness. For the convenience of the Court, we reproduce in the Appendix as Exhibit B the cross-examination of Closter.

The third and final co-conspirator to testify was Robert Moll (H. 301, *et seq.*), who was not cross-examined in behalf of Stanbridge and Closter (H. 397), only by the District Attorney (H. 323-395).

It is undisputed that Stanbridge had a full and complete opportunity to cross-examine Moll and Closter regarding any part of Moll's statement or Closter's confession which Stanbridge disputed. The trial in this regard was fair in all respects. Unlike *Bruton*, we are not dealing with a non-confessing defendant. Unlike *Bruton*, we are not dealing with an accused, robbed of his Sixth Amendment right to cross-examine his accuser.

The New York proceedings were fair (*Harrington* v. *California* [1969] 395 U.S. 250) so the petition should be disallowed.

Respectfully submitted,

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APPENDIX

Exhibit A

(Opinion of New York State Court of Appeals)

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *v.* ROBERT MOLL and JOHN CLOSTER, Defendants, and WILLIAM STANBRIDGE, Appellant.

Reargued December 11, 1969; decided January 8, 1970.

Crimes—confessions—upon reconsideration following remand from United States Supreme Court, court adheres to affirmance of judgment of conviction of defendant which followed trial at which confessions of codefendants were received, with limiting instructions to jury—all three defendants testified at Huntley hearing and defendant's lawyer had full opportunity to examine codefendants as to their statements—under circumstances, Bruton v. United States (391 U.S. 123) does not require different result.

Defendant, convicted of manslaughter in the first degree, robbery, larceny and assault, confessed his participation in the crimes and two of his accomplices also confessed. At a joint trial, the confessions of each codefendant were received, each only against the one confessing, with limiting instructions to the jury as to the others. The Supreme Court of the United States vacated the judgment of conviction as to defendant and remanded the case "for further consideration in light of *Bruton* v. *United States,* 391 U. S. 123". The decision in the *Bruton* case turned entirely on the absence of confrontation of witnesses required by the Constitution in a criminal trial. However, there was full adversary opportunity for defendant's lawyer to examine these codefendants as to their statements. All three defendants testified at *Huntley* hearing. Counsel for defendant cross-examined one of the codefendants and he had opportunity to cross-examine the other but did not do so.

Exhibit A

The availability of a means to test the truth distinguishes this case from the *Bruton* case. Upon reconsideration, the judgment of conviction should be affirmed.

People v. *Stanbridge*, 26 A D 2d 654, affirmed.

REARGUMENT of an appeal, by permission of the Chief Judge of the Court of Appeals, from a judgment of the Appellate Division of the Supreme Court in the Second Judicial Department, entered July 5, 1966, which (1) modified, on the law, and, as modified, affirmed a judgment of the Supreme Court (FRANK A. GULOTTA, *J.*) rendered in Nassau County upon a verdict convicting appellant of the crimes of manslaughter in the first degree, robbery in the first degree, grand larceny in the first degree, assault in the first degree (2 counts) and assault in the second degree (2 counts) and (2) affirmed an order of the Supreme Court (FRANK A. GULOTTA, *J.*), entered in Nassau County, which, after a *Huntley* hearing conducted pursuant to a direction by the Appellate Division (22 A D 2d 921), determined that confessions made by defendant were voluntary. The modification consisted of making the sentence imposed for assault in the first degree run concurrently, rather than consecutively, with that imposed for robbery. The Court of Appeals affirmed the judgment of the Appellate Division on December 29, 1967 (21 N Y 2d 706). The United States Supreme Court granted appellant's petition for a writ of certiorari, vacated the judgment of the Court of Appeals and remanded the case "for further consideration in light of *Bruton* v. *United States*, 391 U. S. 123". (See *Stanbridge* v. *New York*, 395 U. S. 709.)

Frank A. Lopez and *Theodore Rosenberg* for appellant. I. The decision of the United States Supreme Court on June 16, 1969, granting appellant's petition for a writ of certiorari after that court had directed specific argument as to the applicability of *Bruton* v. *United States*, 391 U. S. 123, the vacatur of the judgment of this court and the remand of appellant's case to this court for further consideration

in the light in *Bruton* v. *United States, supra,* notwithstanding the earlier decision of that court in *Harrington* v. *California,* 395 U. S. 250 (1969), decided two weeks prior to the grant of appellant's petition for a writ of certiorari and nearly two full months after the decision of this court in *People* v. *McNeil,* 24 N Y 2d 550 (decided April 23, 1969), a decision which the Supreme Court undoubtedly considered in deciding appellant's petition amounts to a definitive adjudication from the highest court in our land that appellant is indeed entitled to a new trial in light of *Bruton* v. *United States, supra.* (*United States ex rel. Catanzaro* v. *Mancusi,* 404 F. 2d 296; *Chapman* v. *California,* 386 U. S. 18; *People* v. *Perez,* 299 N. Y 784, 300 N. Y. 208.) II. With respect to appellant's conviction of manslaughter his statements were totally exculpatory. His codefendant, Moll, however, not only incriminated himself but Stanbridge as well in his statements. As to his manslaughter conviction appellant is on all fours with the *Bruton* rule. (*People* v. *Anthony,* 24 N Y 2d 696.) III. Appellant's conviction of robbery in the first degree should be reversed in the light of *Bruton* v. *United States* since the harmless error rule cannot be applied here inasmuch as appellant's conviction is not predicated upon overwhelming evidence. Instead, the entire evidentiary content of the People's case consists of appellant's suspect confessions. (*People* v. *McQueen,* 18 N Y 2d 337; *Escobedo* v. *Illinois,* 378 U. S. 478.) IV. Appellant's right to confrontation was violated by virtue of testimony adduced by the People. A joint trial severely prejudiced appellant's substantial rights. V. The trial prosecutor's use of Moll's confession as evidence of guilt against Stanbridge in summation was violative of the Sixth and Fourteenth Amendments to the United States Constitution.

William Cahn, District Attorney (*Henry P. DeVine* of counsel), for respondent. The judgment should be upheld.

Exhibit A

(*People* v. *Anthony*, 24 N Y 2d 696; *People* v. *McNeil*, 24 N Y 2d 550; *People* v. *Galloway*, 24 N Y 2d 935; *Harrington* v. *California*, 395 U. S. 250; *United States ex rel. Catanzaro* v. *Mancusi*, 404 F. 2d 296.)

BERGAN, *J.* In the murder of a policeman following close upon the robbery of a store, William Stanbridge, a participant in both crimes, has been convicted of manslaughter in the first degree, a substantially lesser charge than the murder, first degree, on which he was tried. He was also convicted of robbery, larceny and assault charges arising from the store robbery.

Stanbridge confessed his participation in the crimes. He had two accomplices, Robert Moll and John Closter, who also confessed. There was a joint trial in which the confessions of each defendant were received, each only against the one confessing, with adequate limiting instructions to the jury as to the others. This court in 1967 affirmed all three convictions with a dissenting opinion by Judge BURKE in which Chief Judge FULD joined (*People* v. *Moll*, 21 N Y 2d 706).

On June 16, 1969 the Supreme Court of the United States on petition of Stanbridge vacated the judgment of conviction as to him and remanded the case to this court "for further consideration in light of *Bruton* v. *United States*, 391 U. S. 123" (*Stanbridge* v. *New York*, 395 U. S. 709).

The decision in *Bruton* turned entirely on the absence of confrontation of witnesses required by the Constitution in a criminal trial. This absence was noted when a codefendant's confession implicated the complainant and was received in evidence at a joint trial.

In such a situation, the human nature of juries being what it is, the Supreme Court felt the protection of judicial instruction to the jury not to consider what A's confession said about B was an inadequate safeguard.

So the rule of *Delli Paoli* v. *United States* (352 U. S. 232), resting on the supposed protection of careful judicial

instruction, was overruled. The essence of *Bruton* as laid down by Justice BRENNAN is this: "Here the introduction of Evans' confession posed a substantial threat to petitioner's right to confront the witnesses against him, and this is a hazard we cannot ignore. Despite the concededly clear instructions to the jury to disregard Evans' inadmissible hearsay evidence inculpating petitioner, in the context of a joint trial we cannot accept limiting instructions as an adequate substitute for petitioner's constitutional right of cross-examination" (391 U. S., p. 137).

Further consideration of the present case with the *Bruton* doctrine in mind requires this court to see both the extent to which there was an absence of confrontation against Stanbridge when the whole record is looked at; and if the rule of *Bruton* had been violated, whether the other evidence in the case was so strong as to subordinate the effect on Stanbridge of confessions of codefendants to a minor role so as to say the error was harmless within *Harrington* v. *California* (395 U. S. 250 [1969]).

Justice BRENNAN, dissenting in *Harrington*, felt that "the deterrent effect of" *Bruton* and some other cases "will be significantly underminded" by *Harrington* (395 U. S., p. 255). A State court must, however, take the two cases the way they have been laid down and follow them both in good faith and as far as possible.

On confrontation with the confessing codefendants, there was full adversary opportunity for Stanbridge's lawyer to examine these defendants as to the statements made by them involving Stanbridge. All three defendants testified at the *Huntley* hearing; none testified at the trial. Counsel for Stanbridge cross-examined Closter, one of the codefendants; he had opportunity to cross-examine Moll but did not do it.

The complete absence of confrontation found in *Bruton*, therefore, did not exist here; and although there is a difference between the cross-examination afforded at a trial,

absent here because defendants did not testify, and that afforded at the *Huntley* hearing where they did testify, the availability of a means to test truth seems significantly to distinguish this case from *Bruton* where there was no such availability of cross-examination or confrontation.

This court, considering the effect of *Bruton*, has noted the difference in effect where codefendants testify at the trial and are subject to cross-examination (*People* v. *Anthony*, 24 N Y 2d 696). It has applied the same rule where opportunity to cross-examine was afforded at a *Huntley* hearing (*People* v. *Galloway*, 24 N Y 2d 935).

On somewhat different grounds, the court also has not applied the *Bruton* rule where there are multiple confessions of codefendants and the complaining defendant has himself confessed, apparently because this is a safety check on the reliability of the confession or, in any event, minimizes the prejudicial effect of receiving implicating confessions of other defendants. "[I]n a case such as this, the logic of *Bruton* is inapplicable" (*People* v. *McNeil*, 24 N Y 2d 550, 552 [Scileppi, *J.*]). This was in part based on the rationale in *United States ex rel. Catanzaro* v. *Mancusi*, 404 F. 2d 296).

This reasoning suggests somewhat the broader view of *Harrington* which affords ground on which the record in this case should be distinguished from *Bruton*. If Stanbridge's confession be taken into account, the evidence against him is, indeed, as overwhelming as that considered in *Harrington*.

The issue on the validity of that confession is now closed and as a matter of law it must be held a free and voluntary confession properly received against Stanbridge. This, as to Stanbridge, was the main problem debated in this court, as the dissenting opinion demonstrates (21 N Y 2d 706, 709-711).

The Supreme Court did not reopen this issue in remitting to consider the effect of *Bruton* which is quite a differ-

ent question, and so the confession of Stanbridge added to the circumstantial case against him gives strong enough support to the judgment to come within *Harrington*. Indeed the identity of an unusual car owned by Stanbridge, observed at the scene of the crime by a youthful and alert witness, led to the apprehension of all defendants.

Upon reconsideration the judgment should be affirmed.

Judges SCILEPPI, BREITEL, JASEN and GIBSON concur with Judge BERGAN; Chief Judge FULD and Judge BURKE concur in the following memorandum: Although we still subscribe to the view set forth in the dissenting opinion in *People* v. *McNeil* (24 N Y 2d 550)—which would require a reversal here—we are constrained by the majority's decision in that case to vote for affirmance. (See, also, concurring opinion in *People* v. *Galloway*, 24 N Y 2d 935, 936.)

Upon reargument by defendant Stanbridge: Original decision of this court, dated December 29, 1967, affirming the judgment, adhered to.

Exhibit B

(Cross-examination of John Peter Closter)

Cross-examination by Mr. McDonough:

Q. Mr. Closter, just a couple of questions: Under your direct examination by Mr. Schneider, do you recall saying that sometime during the early morning hours on the 23rd of March while you were in the precinct you did see the defendant Moll? A. Yes, I did, laying on the floor in the corridor.

Q. I want to ask about that. If I heard, you said you thought that was about two hours after dawn or two hours— A. After it became light out, yes.

Q. And you had been there for a considerable period of time then, had you? A. Yes, I had.

Q. Now, when you saw Moll, can you tell me where you were again at that time, if you know, what floor, precinct, what room? A. Yes. It was on the first floor in a room in the back of the police station, to the right—I think it was the last room as you walked down the corridor on the right. The windows, you could see like the police parking lot, the one where they parked the car, I think, when they brought me in. You could see like a parking lot, and I think there was a house or two across on the other side of the parking lot or maybe just one house.

Q. In any event, the room you were in, from the windows in that room you say you could see the parking lot? A. Yes.

Q. Now, then, do I understand that at some point—and this is the time we are speaking about—you say about two hours after it became light—then this was just before one of the detectives opened the window and suggested that you try to get out? A. Yes. It was maybe a half hour or before that he had done that.

Q. But there came a point where he also opened the door, is that what you said, the detective? A. Yes.

Exhibit B

Q. And that was—was this just before you say you saw Moll? Do you understand that question? A. Yes. By saying "just before," I mean like maybe a half hour or an hour before.

Q. What I am getting at is this: As I understood your testimony, you did say at some point a detective did open the door, the room you were in? A. Yes, that's right.

Q. Faced out on the corridor, is that right? A. Yes.

Q. And as soon as he did that, did you hear this shuffling noise and the loud talking and what not? A. A while afterwards.

Q. A while afterwards? Well, did the detective leave the door open? A. Yes.

Q. Will you tell me again what you did here? A. At first, you know, I heard footsteps and scuffling. I could see men passing the door. I could hear their voices. They had remained in the corridor. And I heard men to the back part pass the door, too. A lot of men went by the door.

Q. You mean going both ways or just one way? A. No. Some were stopping short of the door, but the first ones that I noticed were the ones that walked all the way past the door and remained on the other side of the corridor.

Q. You said you were in the last room on the right of the corridor? A. Yes, as you were walking down it.

Q. Did these men come from the front toward the back where you were? A. Yes.

Q. Did they pass the door that you were looking out? A. Some of them didn't. Some of them remained behind it.

Q. And could you see where they went after they passed the door? A. No, but you could hear that they didn't leave, because you could hear them scuffling around.

Q. Could you see where they went? A. No, I couldn't see where they went. The opening of the door only covered a certain space that you could see out.

Q. I understand. You said you heard voices. Were they normal tones or were they loud? A. First they were normal but then they were like growling, like.

Q. Growling? A. Yes. You know, like rough.

Q. Could you tell what they were saying? A. No. It was muted, like. There was a lot of them making noise, too. You couldn't pick out any one sentence or anything. You couldn't make heads or tails of it.

Q. Were these men in plain clothes or could you tell— A. Plain clothes.

Q. You saw no uniformed men at that point? A. No, I don't recall any uniformed men.

Q. Again, as I understood, you told Mr. Schneider you saw—you said you first saw a body? A. Yes.

Q. Meaning that you couldn't recognize it, just saw a human? A. First I saw it was a body, but then I realized who it was because I saw his face.

Q. All right. Wait a second. We will get to that. But the first thing you saw was just some human body? A. Yes; human form, yes.

Q. Human form. Was this on the floor? A. Yes.

Q. You could see it from where you were? A. Yes.

Q. Inside this room? A. Yes.

Q. At this time was there a number of other men around? A. Yes.

Q. Then what did you see with respect to this human form, as you call it? A. Well, I could see Robert Moll's face and the way he was dressed, the clothing he had on.

Mr. McDonough: May I have that read back?
The Court: Read it back.
(The answer was read.)

Q. When you first saw him, was he actually down on the floor? A. Yes, down on his side.

Q. On his side? A. The front part of his body, facing the doorway.

Q. Was his face facing towards you? A. Yes.

Exhibit B

Q. And this was the point at which you recognized him? A. Yes.

Q. Did you say you recognized his clothing as well? A. I saw how he was dressed.

Q. Did you recognize him, his clothing that you had at some time seen Moll in?

Mr. Direnzo: Objected to.

The Court: Will you read the question?

Mr. McDonough: I will reword it.

The Court: Read the question back.

(The question was read.)

Mr. McDonough: Had he answered the question?

The Court: I shall overrule the objection.

Mr. Direnzo: He withdrew the question, your Honor.

The Court: I see.

Mr. McDonough: May I inquire how the record stands at the moment?

The Court: Would you read back the question and everything that followed.

(The record was read.)

Q. Well, in any event, you did, as you testified twice now already, recognize Moll's face at that point? A. Yes.

Q. What, if anything, did you observe as to what was going on at the time you were looking out the door? A. They were hitting him and kicking him.

Q. Hitting him and kicking him? A. Yes. Some of them were bent down over him, the ones that were hitting him. And one guy was down on one knee, leaning over him, hitting him, and the others were kicking him like in his legs.

Q. Did you recognize any detectives? A. One of them, I did. I don't know his name but I could pick him out.

Q. That's all right. You can't remember his name now? A. No.

Q. Did they actually stop in front of the door there for any period of time at all? A. He was laying on the floor there for about twenty or twenty-five seconds.

Q. And this hitting that you described and kicking was going on during that period? A. Yes.

Q. And then what did you see after the twenty-five seconds? A. They picked him up and took him further down the hall, out of my line of sight.

Q. That is, they took him toward the front of the building? A. Yes.

Q. You were in the last room in the back, you say? A. Yes.

Q. And that was the last thing you saw? A. Yes.

Q. Well, aside from what you saw, the last thing you saw, did you hear anything more? A. You mean down that corridor? I heard noises and feet walking and men's voices.

Mr. McDonough: Excuse me a second, your Honor.

I have no further questions, your Honor.

Cross-examination by Mr. Direnzo:

Q. Mr. Closter, how old were you at that time? A. 19.

Q. When were you 19? A. October 11, 1961—1960.

Q. Now, tell me, at any time while you were in the station house, did you hear a window break? Yes or no. A. I heard noise upstairs.

Q. You won't say that you did or did not hear a window break; is that correct, sir? A. It could have been a window —I don't know if it was a window or what.

Mr. Doolittle: Your Honor, that's speculative. I object. That is speculative.

The Court: I will allow it.

What is your answer now?

Exhibit B

The Witness: I heard, I will say, glass break. But I don't know if it was a window or what it was.

Q. Tell me, did you hear any shouting or any yelling at any time from anybody? Did you hear any human voice shout or yell while you were in that precinct other than your own voice? A. The detectives were yelling.

Q. Did you hear either the voice of anyone else other than a detective, if you know? A. Not that I could recognize.

Q. Not that you could recognize? A. No.

Q. Would you say it was quiet in that station house or would you say it was very noisy? A. It was quiet sometimes. It was noisy at other times.

Q. Now, there came a time, did there not, when you saw Stanbridge? A. Yes.

Q. Did you see anybody do anything to Stanbridge in your presence? And if so, what was it? A. I saw him get punched on the right side of his face.

Q. Do you know who punched him? A. It was a detective but I don't know which one.

Q. At the time that this detective punched Stanbridge, did Stanbridge do anything to provoke that detective into punching him? A. No, he didn't do anything.

Q. Did he say anything? A. No, he was sitting in a chair.

Q. Who was sitting in a chair. A. Stanbridge.

Q. And he got punched while he was sitting in a chair? A. Yes.

Q. Were you at any time struck in his presence? A. What do you mean by "struck"? You mean "hit"?

Q. Punched or hit. A. I wasn't punched, no.

Mr. Doolittle: I didn't get the answer to that. May I have the answer reread?

The Court: Yes.

(The answer was read.)

Exhibit B

Q. Now, when you said you saw the face of Moll, is it your testimony you saw his face while his face was on the ground? A. He was on his side and his face—

Q. Was his face touching the floor, if you know? A. It was several inches above the floor. He was like leaning on his side.

Q. Now, you said they were hitting and kicking him. Describe how he was being hit.

Mr. McDonough: If your Honor please, I don't see how in any way this type of questioning concerns Mr. Direnzo's client. I have covered the matter as far as I think it is necessary from the standpoint of my client, and I shall object to any further questioning at this point.

The Court: Overruled. I am interested, of course, in hearing the testimony concerning all three defendants and all of the occurrences that these men say happened there that day. It may be true that one lawyer may be trespassing upon the province of another, but I can't help that.

Q. You actually saw this happen? You saw him getting hit and kicked while he was on the ground? A. Yes, I did.

Q. Your seeing Moll get hit and getting kicked, did that also frighten you? A. It sure did.

Q. Did that also affect your state of mind at that time? A. Yes.

Q. Did seeing what you saw constitute one of the inducements which prompted you to sign the statement? A. I—

Mr. Schneider: I object to that, your Honor.

Mr. Direnzo: Withdrawn.

Q. Did seeing what you saw induce you to make the answers which you did make to the questions put to you by Mr. Cahn? A. Yes.

Exhibit B

The Court: Now, counselor, I want to forewarn you. While I made certain restrictions—

Mr. Direnzo: All right.

The Court: —in connection with this examination—now, wait a minute—you are now getting into a field which is going to compel me to widen those restrictions.

Mr. Direnzo: All right. Now, if your Honor pleases—

The Court: You are going into the question of the veracity of the statement.

Mr. Direnzo: I am not doing that.

The Court: Don't—

Mr. Direnzo: That's exactly what I am not doing.

The Court: Wait just a moment. That's for me to construe.

Mr. Direnzo: All right, your Honor. Recognizing that that's for you to construe, I will now ask your Honor for a point of information.

The Court: I am not giving any information.

Mr. Direnzo: To this extent, I think I am entitled to it. We are here, conducting a hearing under a canopy laid down by the Appellate Division, and to that extent, if your Honor pleases, I feel I can ask your Honor whether, in making the statement he did make, whether there was an inducement of fear on his part. That is the only limited purpose for which I am asking that question.

The Court: I shall give you every protection under the canopy of which you speak. I am telling you that I am forewarning you that you are going into a field which is widening out into the question of the truthfulness of the statement.

Mr. Direnzo: And I say—

The Court: With that warning—

Mr. Direnzo: All right, your Honor.

The Court: With that warning, you may be guided.

Mr. Direnzo: With that warning, I will state this: I have no further questions with that warning, your Honor, because I would rather tread on the side of caution, but I say this to your Honor, that the only purpose I had in asking that question was solely to establish his state of mind, not on the question of veracity of the statement itself—his state of mind when he answered the questions that were put to him, so that this record will be absolutely clear on the purpose of my asking those questions.

I have no further questions.

Mr. McDonough: If your Honor please, may I say that should you see fit, because of any question Mr. Direnzo may have asked this particular witness, the defendant, I would like to state for the record that I do not intend to go into the Q-and-A statement of Mr. Cahn in any way, and I hope that any ruling you might see fit to make subsequently will not apply to my client, Moll.

Mr. Direnzo: I will have the record show that any question I asked this witness, I asked completely on my own, without any suggestion, advice, counsel, aid or assistance from either Mr. McDonough or Mr. Schneider.

Mr. McDonough: I think I made my position clear.

Mr. Direnzo: And I think I made mine clear.

The Court: I am not deaf yet, Mr. Direnzo.

Mr. Direnzo: I beg your pardon?

The Court: I am not yet deaf.

Mr. Direnzo: I am not so sure that my colleagues aren't. It wasn't for your benefit; it's for their benefit.

Exhibit B

The Court: Cross-examination?

Mr. Doolittle: Yes, your Honor. Because of some matter brought out in direct examination, may I run down to my office? I tried to grab all the papers myself, but I evidently left some down I intended to use on cross-examination.

The Court: Let's have a five-minute recess.

(A recess was taken.)

Mr. Doolittle: Your Honor, before I proceed I would like to request the Court—I understand Mr. DeVine was permitted Detective Hushion to sit along with him. I have had Detective Daniel Cavanaugh working with me very closely on this case. He has been assigned to help me with this. And I was wondering—he has just come back from some investigation—whether or not he could assist me by sitting here.

The Court: Is that the Detective Cavanaugh mentioned in this?

Mr. Doolittle: Yes, your Honor.

The Court: Your application is denied.

Mr. Doolittle: All right, sir.